

Offshore Compliance and Regulatory News: Sanctions

News - 16/02/2016

Robust sanctions compliance is of central importance to financial services businesses in Jersey, a point made all the more important by the impact of recent EU/US sanctions. Understanding the operation of various sanctions and having systems in place to ensure that CDD processes capture sanctions risks is of the utmost importance in light of the severe penalties in place for either directly or indirectly committing sanctions offences.

The EU sanctions pursuant to Regulation (EU) No 833/2014 as amended by Regulation (EU) No 960/2014 and Regulation (EU) No 1290/2014 (the Russian Sanctions) and US financial sanctions (OFAC issued sanctions pursuant to Executive Order 13662) against Russia in respect of the situation in Ukraine have presented numerous challenges for financial services businesses in the Island. Both the EU and US sanctions purport to stifle certain technology/defence and oil exploration activities benefitting Russia. However, unlike typical sanctions, which adopt an asset freeze to target funds and economic resources of certain sanctioned persons and entities, the financial sanctions have been designed to restrict the ability of certain Russian entities and connected companies from raising finance on the capital markets or through loan and debt instruments.

Article 5 of the Russian Sanctions, which are directly applicable in Jersey, pursuant to the EU Legislation (Sanctions) (General Provisions) (Jersey) Order 2014 and EU Legislation (Sanctions – Russian) (Jersey) Order 2014, requires organisations – particularly trust and corporate service providers – to carefully consider: whether entities being administered are caught by the Russian Sanctions; whether transactions that are being engaged in are substantively prohibited by the restrictions in the Russian Sanctions; and whether steps taken can/may be considered to be tantamount to circumvention of the offences contained within the Russian Sanctions.

Penalties for sanctions breaches are severe. Pursuant to the Russian Sanctions, where a person either: contravenes the prohibitions contained in the sanctions; intentionally furnishes false information or a false explanation to any person exercising powers under the sanctions; or

destroys, mutilates, defaces, secretes or removes any document with intent to evade the provisions of the sanctions, they will be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

Those affected by the Russian Sanctions should ensure that robust CDD is being undertaken to ascertain whether customers/clients etc., are sanctioned entities. Where there are applicable sanctions restrictions and with particular reference to the Russian Sanctions, it is imperative that a thorough analysis of any proposed transaction is undertaken and where any doubts arise, that legal advice is obtained. Interpretation of terms and concepts under the Russian Sanctions is a fraught area, and quite complex questions can arise such as whether:

- The issuing of shares in a company breaches the restrictions on issuing transferable securities.
- A payment between companies constitutes a loan caught by Russian Sanctions.
- A loan arrangement concerning sanctioned entities satisfies Russian Sanctions grandfathering requirements.
- An exemption may apply in order to make an application to the Chief Ministers Department for a licence permitting otherwise sanctioned activity

With the EU confirming the Russian Sanctions will remain in place until at least July 2016, financial services businesses and their compliance teams will need to remain vigilant and ensure that Russian Sanctions risks are identified and appropriately dealt with.

Read the full [Offshore Compliance and Regulatory News here](#)

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